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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/719,847	04/09/2001	Kurt Stippler	PA-30026	5356

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EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/719,847

Applicant(s)

STIPPLER ET AL.

Examiner

Curtis E. Sherrer, Esq.

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cb

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-30 is/are pending in the application.
- 4a) Of the above claim(s) 12-15 and 28-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-11 and 16-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of the restriction in the reply filed on 04/16/04 is acknowledged.

Claims 12-15 and 28-30 are withdrawn (28 and 29 depend from non-elected claim 15) from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 04/16/04.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

Information Disclosure Statement

The information disclosure statements filed 05/21/04 and 12/15/00 fail to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered. No English abstract is found for either HU P 9201446 or DE 538,073.

Claim Objections

Claims 24 and 25 are objected to because of the following informalities: the word "clai" should be spelled --claim-- (claim 24); and the word "fro" should be spelled --from-- (claim 25). Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2 and 3 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for varying the cross-section of wort by using a pipe that is vertically adjustable above the wort guiding screen, does not reasonably provide enablement for any other method varying the cross-section of wort. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to vary the cross-section of wort by any other method (other than that claimed in claim 3) and therefore, the invention commensurate in scope with these claims.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 and 5-11 and 16-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite because there is no antecedent basis for the phrase “the vessel’s interior.”

Claim 6 is indefinite because there is no antecedent basis for the phrase “the basic area of the vessel.”

Claim 16 is indefinite because there is no antecedent basis for the phrase “the wort.”

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 5, 7, 9-11, 1626, and 27 are rejected under 35 U.S.C. 102(a) as being anticipated by Mitani et al. (WO98/15612)(“Mitani”).

Mitani teaches a method of boiling wort and the associated boiler. Figure 1 shows a wort boiling apparatus whereby a pipe is located directed above a conical section 4 and below this section is a heat exchanger 2. While the patent does not disclose that wort actually is delivered

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down the upper pipe, with respect to the apparatus claims, that limitation is considered to embody and intended use and therefore is given no patentable weight.

Because the claim preamble is directed to just a single wort treatment vessel, the limitations, of claims 9-11 and 27, are considered to be intended uses of said vessel and therefore are anticipated.

With regard to the process claims, the wort is circulated from the bottom of the wort kettle through the heating tubes of the exchanger onto the spreader and from here it is discharged onto the conical heated surface of the exchanger. (Page 8, lines 6-10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitani.

Mitani teaches that cited above, but does not teach the limitations of claims 6 and 8. The angle of the screen and the area that it covers in the vessel are considered to be notoriously well known result effective variables, e.g., the angle of the screen will determine how fast the wort flows over it and the area it takes up will determine how far it is spread within the vessel. It would have been obvious to those of ordinary skill in the art to modify the area of the guiding screen and its angle of inclination because they are result effective variables that are optimized.

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Claims 17-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitani in view of applicants' admissions (pages 1 and 2).

Mitani teaches that cited above, but does not disclose the limitations of claims 17-25. Applicants admit that wort processing involves various heating regimes for the wort. It would have been obvious to those of ordinary skill in the art to use the apparatus of Mitani to heat the wort as claimed in 18-23 because various heating regimes are commonly performed with wort as admitted to by applicants.

Claims 24 and 25 are directed to the layer of wort that flows over the conical heat exchanger and this is considered to be a result effective variable that is based on the flow rate during its heating. It would have been obvious to those of ordinary skill in the art to allow the wort layer thickness to be that which is claimed because those in the brewing arts commonly optimize heating flow rates.

Finally, with regard to the use of a pump or superheated steam as the heating medium, these are both notoriously well known in the brewing art so that it would have been obvious to those of ordinary skill in the art to utilize said pump and steam for its intended effects.

Conclusion

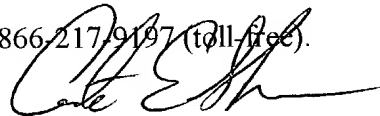
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kruger et al (USPN 4,550,029) teaches a method of boiling wort. Tretter (USPN 4,836,097) teaches a method for separating sludge in the beer brewing. Widhopf (USPN 5,522,305) teaches a wort kettle for boiling wort. Wasmuht et al. (USPN 5,865,093) teach an apparatus for heating wort. Steinecker (DE 2535121) teaches a wort pan of boiling wort.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer, Esq. whose telephone number is 571-272-1406. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Curtis E. Sherrer, Esq.
Primary Examiner
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